

compositi n comprising from about 7 to about 14% by weight total fat, which composition is formulated as a solid cat food.

Please cancel Claims 6 – 9.

Please amend Claim 11 as follows:

11. The pet food composition of claim 10 which is fortified with vitamins and micronutrients.

REMARKS

Claims 1 – 4, 10, and 11 are pending. The Examiner has noted that the claims presented as Claims 6 and 7 in the response dated August 5, 2002 have been renumbered as Claims 10 and 11. A copy of the pending claims is presented on the appendix attached hereto, with markings shown for amended claims. Claims 6 – 9, previously withdrawn, are cancelled herein.

Claim 1 has been amended to correct a grammatical error. Claim 11 has been amended to modify its dependency.

The Examiner has rejected various claims based on 35 U.S.C. § 103(a) in view of Reinhart, EP 0,678,247, published October 25, 1995 ("Reinhart"); Reinhart in view of Brown et al., U.S. Patent No. 4,229,485, issued October 21, 1980 ("Brown"); and Pscherer *et al.*, WO 97/19683, published June 5, 1997 ("Pscherer") in view of UC Berkley Wellness Letters ("Berkley"). These various rejections are traversed as follows:

The Rejection Under 35 U.S.C. § 103 in View of Reinhart

The Examiner has rejected Claims 1 – 4 under 35 U.S.C. § 103 in view of Reinhart. The Examiner states that Reinhart teaches pet foods containing omega-6 and omega-3 fatty acids, at a ratio of from 3 : 1 to 10 : 1. The Examiner further states that the source of these fatty acids may be from a variety of sources, including fish oil and flax. The Examiner states that Reinhart teaches that the percentage of crude fat is 20% to 23%, but does not teach crude fat in the range of from about 7% to about 14%.

In response to Applicants' previous arguments, the Examiner states that criticality of the claimed limitations has not been provided in the specification. Applicants readily traverse this statement, since the non-obviousness of the claims in view of Reinhart has indeed been explicitly demonstrated. Reinhart states that Menhaden (fish) oil is a concentrated source of eicosapentaenoic acid; that flax oil is a concentrated source of alpha-linolenic acid; and that

safflower oil is a concentrated source of linoleic acid. Reinhart states that each of these sources can be utilized to prepare compositions having various omega-6 to omega-3 fatty acid ratios, including 5 : 1; 10 : 1; 25 : 1; 50 : 1; and 100 : 1. Reinhart fails to teach a preferred source of omega-6 and omega-3 fatty acids, at any total fat level in any composition. } (what!)

In contrast, rejected Claims 1 – 4 require pet foods comprising omega-6 and omega-3 fatty acids, wherein the ratio of these components is about 5 : 1. Moreover, while Reinhart relates to levels of fat in a basal diet (20 – 23% fat, see Reinhart, page 3, lines 40 – 43), the present invention requires from about 7% to about 14% by weight total fat.

Contrary to the Examiner's characterization, Applicants have not merely "optimized" the level of total fat in the pet food composition. Applicants have explicitly shown that at the low levels recited in Applicants' claims (which are not suggested by Reinhart), there is a critical source of omega-3 fatty acids which should be used. Indeed, Applicants' specification states that "whereas both fish oil and flaxseed oil can be included in the feline diet to reduce inflammatory response, flaxseed oil offers a better alternative in a lower lipid (14%) diet because flaxseed oil shows minimal immunosuppressive activity compared to fish oil." See Applicants' specification, page 12. Since unexpected results have been shown at this low level of lipid (i.e., a break-out amongst sources of omega-3 fatty acid), non-obviousness of the present invention has been demonstrated. Reinhart fails to teach or even suggest low levels of dietary fat (from about 7% to about 14%), and even further fails to teach the criticality of omega-3 fatty acid source at this specific level. } Is this considered "unexpected results" ?

As such each of Claims 1 – 4 are non-obvious in view of Reinhart and the rejection should be promptly withdrawn. If the Examiner persists with this rejection, the Examiner should reference the prior art that shows the criticality of using flaxseed oil comprising a majority of alpha-linolenic in pet food compositions having a total fat level of from about 7% to about 14%, along with the other required elements of Applicants' claims.

The Rejection Under 35 U.S.C. § 103 Based on Reinhart in View of Brown

The Examiner has rejected Claims 10 and 11 under 35 U.S.C. § 103 based on Reinhart in view of Brown. Based on the arguments set forth above, Claims 10 and 11 (which are each ultimately dependent upon Claim 1) are non-obvious in view of Reinhart. Indeed, as relevant to the present issues, Brown merely states that various sources of oil can be used in the referenced dried cereal pet foods. Since Brown does nothing to remedy the deficiencies of Reinhart in this respect, as the Examiner appears to appreciate, Claims 10 and 11 are further non-obvious based on Reinhart in view of Brown. As such this rejection should be promptly withdrawn.

The Rejection Under 35 U.S.C. § 103 Based on Pscherer in View of Berkley

The Examiner has rejected Claims 1 – 4 under 35 U.S.C. § 103 based on Pscherer in view of Berkley. The Examiner states that Pscherer teaches a lipid emulsion containing from 35% to 65% by weight of vegetable oils which supply omega-6 fatty acids, and from 5% to 20% by weight of fish oils which supply omega-3 fatty acids. The Examiner acknowledges that Pscherer teaches that the predominant omega-3 fatty acids in fish oil are eicosapentaenic acid and docosahexaenic acid. The Examiner further acknowledges that Pscherer fails to teach or even suggest the use of flaxseed oil to provide the omega-3 fatty acid source. Berkley merely teaches that an excellent source of alpha-linoleic acid is flaxseed oil.

Similar to the arguments set forth above in view of Reinhart, Pscherer is a particularly deficient reference in view of the claims of the present invention. Pscherer fails to teach or even suggest *any* element of the present claims. For example, the present invention requires omega-6 and omega-3 fatty acids in a weight ratio of about 5 : 1. As further required, the majority of omega-3 fatty acids comprises alpha-linolenic acid derived from flaxseed oil, wherein the pet food composition comprises relatively low levels of fat, *i.e.*, from about 7% to about 14% by weight total fat. Pscherer relates strictly to a lipid emulsion which is a formulation for *parenteral* use. As a lipid emulsion, the formulation contains exceedingly high levels of total fat, at a minimum of 70% by weight of total fat. As such, Pscherer fails to teach or even suggest any composition, pet food composition or otherwise, having such low levels of dietary fat. Moreover, Pscherer explicitly teaches that the omega-3 fatty acid source is fish oil rich in eicosapentaenic acid and docosahexaenic acid. The Examiner states that Berkley remedies this deficiency by its mere teaching that flaxseed oil is an excellent source of alpha-linolenic acid.

As set forth above with respect to Reinhart, Applicants have shown the criticality of utilizing flaxseed oil as a source of alpha-linolenic acid in pet food compositions which comprise relatively low levels of total fat. Indeed, Applicants' specification states that "whereas both fish oil and flaxseed oil can be included in the feline diet to reduce inflammatory response, flaxseed oil offers a better alternative in a lower lipid (14%) diet because flaxseed oil shows minimal immunosuppressive activity compared to fish oil." See Applicants' specification, page 12. Pscherer, with or without the benefit of Berkley, fails to even suggest such low levels of fat; as such Pscherer cannot teach the criticality of any given fatty acid at such levels of fat. Indeed, these combined references do not teach or even suggest pet food compositions having these low levels, wherein alpha-linolenic acid derived from flaxseed oil is selected for a specific, unexpected purpose. Since unexpected results have been shown at this low level of lipid (*i.e.*, a

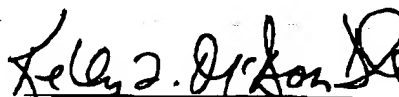
break-out amongst sources of omega-3 fatty acid), non-obviousness of the present invention has been demonstrated.

If the Examiner persists with this rejection, the Examiner should indicate the passages of Pscherer or Berkley which suggest pet food compositions having from about 7% to about 14%, with specific selection of alpha-linolenic acid as the omega-3 fatty acid source at this specific fat level. Because this indication cannot be made, the Examiner should promptly withdraw this inappropriate rejection.

CONCLUSION

Applicant therefore respectfully requests that the Examiner withdraw the rejections under 35 U.S.C. § 103(a) and allow Claims 1 - 4, 10, and 11 as amended and otherwise presented herein. If the Examiner believes that personal contact would be beneficial for disposition of the present application, the Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,



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Version of Pending Claims with Markings Shown

1. A pet food composition comprising an effective inflammatory response-reducing amount, on a dry matter basis, of omega-6 and omega-3 fatty acids in a weight ratio of ~~from~~ about 5:1, wherein the majority of omega-3 fatty acids comprises alpha-linolenic acid derived from flaxseed oil, said composition comprising from about 7 to about 14% by weight total fat, which composition is formulated as a solid cat food.
2. The pet food composition of claim 1 in which at least about 20 wt% of the total fatty acids are omega-6 fatty acids.
3. The pet food composition of claim 1 in which at least about 4 wt% of the total fatty acids are omega-3 fatty acids.
4. The pet food composition of claim 1 in which said omega-3 fatty acids further comprise eicosapentaenoic acid, docosahexaenoic acid, or combinations thereof.
10. The pet food composition of claim 1 wherein the solid cat food is selected from the group consisting of dry kibble, moist chunk foods, moist canned cat food and cat treats.
11. The pet food composition of claim ~~6~~ 10 which is fortified with vitamins and micronutrients.